

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 34/Lab./AIL/T/2016, dated 6th May 2016)

NOTIFICATION

Whereas, an award in I.D. (L) No.15/2014, dated 31-3-2016 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Abirami Soap Works, Sembiapalayam Village, Puducherry and its workman Thiru E. Arun over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour), that the said award shall be published in the Official Gazette, Puducherry.

(By order)

E. VALLAVAN,
Commissioner of Labour-cum-
Additional Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

*Present : Thiru N. SIVAKUMAR, B.A., M.L.,
Presiding Officer, Labour Court.*

Thursday, the 31st day of March 2016

I.D. (L) No. 15/2014

E. Arun,
S/o. Elumalai,
4th Cross Street,
Thirumalai Nagar, Mangalam Post,
Mangalam, Pondicherry. . . Petitioner

Verses

The Managing Director,
M/s. Abirami Soap Works,
R.S. N0. 93/1A1 B2,
Sembiapalayam village,
Korkadu Post, Pondicherry. . . Respondent.

This industrial dispute coming on 17-3-2016 for final hearing before me in the presence of Tvl. S. Asokumar, P. Sam Japa Singh and A. Sakthivel, Counsel for the petitioner, Tvl. R. Ilancheliyan and R. Thilagavathi, Counsel for the respondent and upon hearing both sides, perusing the case records and having stood over till this day for consideration, this Court delivered the following:

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 33/ AIL/Lab./J/2014, dated 5-3-2014 for adjudicating the following:-

(1) Whether the dispute raised by Thiru E. Arun against the management of M/s. Abirami Soap Works, Sembiapalayam village, Korkadu Post, Puducherry over his non-employment is justified? If justified, what relief he is entitled to?

(2) To compute the relief, if any awarded in terms of money, if it can be so computed?

2. The averments made in the claim statement are briefly stated as follows:-

2(i) The petitioner namely, E. Arun, has been working with the respondent company for the last six years and he rendered service with utmost sincerity. During the course of his employment, the petitioner did not give any room for any wrong things. There is a union, namely, Abirami Soap Works Thozhilalar Viduthalai Munnai functioning in the factory. The subscription amounts of the members regularly collected and paid to the office bearers, namely, Thavamani, Santhamoorthy, Thirumurugan and Selvam of the said trade union and they used to spend the amount for their lavish expenses. When the petitioner questioned about the activities of the office bearers of the said sangam they scolded and abused the petitioner and his family members in foul language and also threatened him with dire consequences. So, the petitioner lodged a complaint before the Mangalam Police Station. As the petitioner asked about the illegalities of the executive member of the said trade union, a false police complaint on 29-10-2011 was lodged against the petitioner and with a view to harass him some charges were framed and departmental enquiry commenced. Without giving opportunity to the petitioner to offer his explanation, he was suspended temporarily by the management. No committee has been formed in the industry, so, as to resolve the issues arising among the labourers. During Departmental enquiry proceedings the management did not permit the petitioner to cross examine the witnesses of management side. No opportunity was given to examine petitioner side witness. The final statement of the petitioner was not received by the disciplinary committee. The principle of the natural justice was denied to the petitioner and the findings of the disciplinary committee is one sided and the same was against the petitioner. The letter, dated 12-10-2012 sent by the petitioner was rejected, and, on 22-10-2012 the petitioner was dismissed from service. Only by stating false allegation the enquiry was conducted and on the basis of the finding, the petitioner's

service has been terminated. So, the petitioner prays for setting aside the report on failure of Conciliation, dated 3-2-2014 and consequently to the dismissal order, dated 2-10-2012 passed by the respondent management, and also to direct the respondent management to reinstate the petitioner with all backwages, attendant benefits and thus render justice.

3. The averments made in the counter are briefly stated as follows:-

3(i) On 19-10-2011 the petitioner without instruction from his Supervisor directed to his co-worker Thiru Santhamoorthy to do some other work. When the co-worker Thiru Santhamoorthy refused to attend the call on the petitioner, he abused him in foul language. When the co-worker Thiru Santhamoorthy complained to the Supervisor, the petitioner in the presence of Supervisor again abused him in filthy language. Further, on 22-10-2011 the petitioner along with his associates went to the house of Thiru Santhamoorthy and threatened him and his wife with dire consequences. Further, the petitioner, on 29-10-2011 declined to do the work allotted to him and also scolded and abused the Manager by using foul language. The petitioner was disobedient and never obeyed commands of his Supervisors. So, on the basis of the complaint charges were framed against the petitioner, and the neutral person was appointed as the Enquiry Officer and he conducted enquiry in a fair manner and submitted a detailed report. The petitioner was given due opportunity to participating enquiry proceedings and put forth his case. As the charges framed against the petitioner were proved and taking into accounts the gravity of the charges the petitioner was terminated from his service. There is no motivation and victimisation in conducting enquiry against the petitioner and consequently passing an order of termination. Petitioner without taking part in the domestic enquiry has falsely contended that the enquiry was not fairly conducted and he was not given due opportunity. The petitioner had indulged in gross-violation and misconduct and intimidated co-worker and caused reduction of production. The attitude and behavior of the petitioner in the presence of female workers was indecent and condemnable. Only on the basis of the enquiry report the petitioner was dismissed from service. The petitioner is not entitled to claim reinstatement with backwages and other attendant benefits. The claim of the petitioner is devoid of merits and liable to be dismissed.

4. On the side of the petitioner Thiru E. Arun (Petitioner) has been examined as PW.1 and Ex.P1 to P62 were marked. Thiru O.P. Sanjay Madan, General Manager of the respondent management has been examined as RW.1 and Ex.R1 to R18 were marked.

5. The point for consideration:

(1) Whether the departmental enquiry proceeding against the petitioner was not conducted in a fair and proper manner by observing principles of natural justice?

(2) Whether the service of the petitioner has been terminated illegally and unjustifiably by the management? If so, what relief he is entitled to and what directions are necessary in this respect?

6. On this point:

The petitioner Thiru E. Arun was appointed as a labour in the respondent management, namely, Abirami Soap Works. The respondent is engaged in manufacturing of washing soaps, detergents and detergent powder, etc., Admittedly, the petitioner was working as a permanent employee in the respondent industry.

7. On 19-10-2011 at about 10.00 a.m. when the co-worker of the petitioner, namely, Thiru Santhamoorthy engaged in duty the petitioner asked him to leave his work and to accompany him to do some other work. When the said Thiru Santhamoorthy declined to accompany the petitioner he scolded the co-worker in foul language with dire consequences. The matter was reported to Supervisor Thiru M. Rajendiran who enquired both workers and submitted Ex.P1 (Ex.R1) report, dated 19-10-2011 to the management to take necessary action against the petitioner.

8. In consequence of the quarrel with Thiru Santhamoorthy, the petitioner along with his associates went to Santhamoorthy's house on the evening of 22-10-2002 and scolded and abused him in filthy language and also intimidated his wife. The said Thiru Santhamoorthy has lodged Ex.P2 (Ex.R2) complaint, dated 22-10-2002 management for initiating necessary action against the petitioner. So, the management issued Ex.P3 (Ex.R3) show cause notice, dated 29-10-2011 calling for explanation from the petitioner. The petitioner after getting extension of time submitted Ex.P6 (Ex.R5) explanation, dated 7-11-2011 denying all the complaints levelled against him. As the explanation submitted by the petitioner was not satisfactory, the respondent management issued Ex.P7 memo., dated 15-11-2011 stating that departmental enquiry would be initiated against the petitioner. Thereafter, the petitioner has sent Ex.P8 complaint, dated 19-12-2011 against the some of the co-workers and also he preferred Ex.P9 complaint, dated 21-12-2011 before the Sub-Inspector of Police, Karaikal Police Station. The management appointed Thiru R. Mugundhan, Advocate and Notary Public as the Enquiry Officer and informed the same to the petitioner as per Ex.P11 memo.

9. On 29-12-2011, during second shift a new machine was installed and started for trial running and at the time Supervisor S. Ramesh Kumar directed the petitioner and other workers to do alternative work since they had no work in the production department. At the time the petitioner in utter disobedience refused to attend the alternative work and argued with his supervisor and also scolded him. So, Supervisor S. Ramesh Kumar submitted Ex.P12 report to the management narrating the events. The co-workers of the petitioner have also signed in another report prepared by Supervisors S. Ramesh Kumar and copy of the same is marked as Ex.P13 (Ex.R7). As the petitioner blatantly disobeyed the order of the Supervisor, a fine of ₹ 5 was imposed on him and he paid the fine amount and the copy of the fine register is marked as Ex.P15. As the petitioner was disobedient and misbehaved with his Supervisor and co-workers, he was placed under suspension with effect from 19-1-2012 and the copy of the suspension under, dated 18-1-2012 is produced as Ex.P16 (Ex.R8). Ex.P17 (Ex.R9), dated 21-1-2012, Ex.P18 (Ex.R10), dated 25-1-2012 are the representations of the petitioner seeking extension of time for submitting explanation. As per Ex.P19 (Ex.R11) memo., dated 27-1-2012 time to submit explanation by the petitioner was extended by five days. The petitioner has denied the charges leveled against him and sent Ex.P20 (Ex.R12) letter, dated 30-1-2012 to the General Manager. The explanation offered by the petitioner was not satisfactory, so, the management was decided to proceed enquiry against him and accordingly Ex.P21 (Ex.R13) charge-sheet, dated 6-2-2012 was prepared and sent to the petitioner's address. In the meantime, the petitioner sent Ex.P22, dated 9-2-2012 and Ex.P23, dated 10-2-2012 letters seeking for payment of subsistence allowance. The respondent has sent Ex.P23 reply, dated 10-2-2012 stating that his subsistence allowance is available in the office and he may collect it at any time.

10. The Enquiry Officer has sent Ex.P24 notice, dated 8-3-2012 to the petitioner stating that it was proposed to conduct the departmental enquiry on 17-3-2012 at 10.30 hours in the first floor of the building bearing Door No. 34 at 100 feet road, Ellaipillaichavady, Puducherry and the petitioner was required to appear for the enquiry without fail. The petitioner has sent Ex.P26 letter, dated 15-3-2012 stating that his grandmother was on death bed, so, he could not appear for enquiry, dated 17-3-2012. Ex.P27 is the receipt issued at the burial ground to show that petitioner's grandmother died on 17-3-2012. The Enquiry Officer adjourned the enquiry proceedings to 7-4-2012 and issued notice to the petitioner to appear on the hearing date. On 7-4-2012, the petitioner appeared before the Enquiry Officer and

he was questioned regarding the charges levelled against and the petitioner denied all the charges. As the petitioner represented that he did not know the enquiry proceedings, the enquiry officer explained him about the departmental enquiry proceedings in detail. The enquiry was posted to 14-4-2012 for production of documents and list of witnesses by both sides. Again the enquiry was adjourned to 21-2-2012 and on that day the petitioner had submitted a requisition seeking permission to appoint a Lawyer to defend him. It was objected by the representative of the respondent, namely, Thiru Suresh by stating that as he was not a Lawyer nor law graduate, so the worker (petitioner) should not be permitted to engage a Lawyer and this position was explained to the worker. So, the Enquiry Officer decided not to permit the petitioner to engage a Lawyer to defend the petitioner.

11. The respondent management as a delinquent authority submitted 12 documents marked as Ex.M1 to M12 during the enquiry proceedings. Thereafter, the enquiry was adjourned to 5-5-2012 for cross-examination of witnesses. The petitioner did not appear before the Enquiry Officer on 5-5-2012. According to the petitioner as he was not doing well he could not participate in the enquiry proceedings. So, the Enquiry Officer with a view to give a chance to the petitioner, to adduce oral evidence of management side witnesses in his presence adjourned the enquiry proceedings to 14-5-2012. On 14-5-2012, five witnesses, namely, (1) Santhamoorthy, (2) Rajendiran, (3) S. Ramesh Kumar, (4) R. Sivakumar and (5) M. Subramanian were examined as MW.1 to MW5 respectively on respondent side and their statements were recorded. The enquiry was adjourned to 16-5-2012 for cross-examination of management side witnesses by the petitioner.

12. On 16-5-2012 the above said five witnesses were present but, the petitioner did not appear, so the Enquiry Officer adjourned the proceedings to 23-5-2012 as last chance for cross-examination of the management witnesses by the petitioner. On 23-5-2012 the petitioner submitted an application seeking permission to cross-examine the representative of the respondent management, namely, Thiru G. Suresh but, the request was declined by the Enquiry Officer. Further, the petitioner submitted another application seeking for copy of the certified standing order. On the next hearing, date on 28-5-2012 the copy of the certified standing order was furnished to the petitioner and the enquiry was adjourned to 19-6-2012. In the meantime the petitioner sought for Tamil translated copy of the certified standing orders, so, on 9-6-2012, the certified standing order translated in Tamil was furnished to the petitioner, but, he refused to receive the same. So, the Enquiry Officer directed to send the

certified standing order in Tamil language to the petitioner by registered post and adjourned the enquiry to 15-6-2012. As the petitioner represented that certified copy in Tamil was not received time, in another copy was furnished to him on the same day. The witnesses examined on the side of the management were present on 15-6-2012 but, the petitioner was not ready to cross-examine the witnesses again the enquiry was adjourned to 26-12-2012, for cross-examination of management side witnesses. On 23-1-2012, the petitioner insisted for cross-examination of the representative of the management, but, it was not accepted by the Enquiry Officer. The petitioner was stubborn in cross-examining representative of the management as his request was turn down by the Enquiry Officer. The petitioner did not cross-examine the witnesses of the management. So, the Enquiry Officer recorded that cross-examination of management side witnesses was closed and posted the enquiry to 30-6-2012 for recording the evidence of petitioner side. On 30-6-2012 the petitioner did not appear on time and informed that he would come late since his two wheeler punctured but, the petitioner did not appear again so the enquiry was adjourned to 7-7-2012. In the meantime, the petitioner had sent a letter, dated 30-6-2012 alleging that the Enquiry Officer was unfair and biased and not properly recording the evidence. The enquiry officer has recorded his explanations in the proceedings, dated 7-7-2012 for all the allegations raised by the petitioner. The petitioner assured that he would bring his witnesses on the next hearing, so the enquiry was adjourned to 14-7-2012. On 14-7-2012 the documents produced by the petitioner were marked as Ex.W1 to W7, and the petitioner represented that the co-workers afraid of victimisation if they come forward to depose on behalf of him. So, the petitioner sought for an undertaking from the management that no worker would be victimized if they depose in his favour. The representative of the management submitted that no worker would be penalised or victimised if he deposed in any departmental enquiry. So, the enquiry was adjourned to 21-7-2012 for production of petitioner side witnesses, but, on 21-7-2012 the petitioner was absent and failed to produce his witnesses. So, the Enquiry Officer was no other option except to close recording evidence. The copy of the enquiry proceedings is marked as Ex.P51 (Ex.R14).

13. The learned Counsel for the petitioner vehemently argued that the departmental enquiry was not conducted in a fair and proper manner and the Enquiry Officer violated the principles of natural justice. The petitioner was not given due opportunity to cross-examine the witnesses of management side and also to adduce his side witness. Despite repeated requests made by the

petitioner the Enquiry Officer blatantly refused to the permission to engage a Lawyer to defend him. The Enquiry Officer conducted the proceedings in biased manner, so the enquiry report is vitiated. Further, the punishment of dismissal from service imposed on the petitioner is disproportionate to the charges levelled against him.

14. *Per contra*, the learned Counsel for the respondent management submitted that the petitioner was working as a daily rated employee and he was in the habit of committing various misconducts. With a view to spoiling the industrial harmony and peace, on 19-10-2011, the petitioner instructed his co-worker Thiru Santhamoorthi to share his work without obtaining any permission from the Supervisor. When, the co-worker refused, the petitioner scolded him in foul language. When, the Supervisor interfered and advised the petitioner he started to abuse and quarrel with the co-worker in front of the Supervisor. So, a complaint from the co-worker and a report of the Supervisor were submitted to the management. When, the show cause notice was issued to the petitioner, he sent a reply and it was found unsatisfactory, so, he was placed under suspension. After framing charges (Ex.P21) Advocate Thiru R. Mugundan a neutral person was appointed as the Enquiry Officer who conducted the enquiry by strictly observing the principles of natural justice. During enquiry, the petitioner unnecessarily asked to cross-examine the representative of the management. Thiru G. Suresh who was not at all examined as a witness on management side. Despite several adjournments, made at the request of the petitioner he was not ready to cross-examine the management side witnesses and intentionally, prolonged the proceedings. The petitioner levelled some allegations against the Enquiry Officer who has recorded explanations in the enquiry proceedings. Further, the petitioner failed to examine any witness his side. After considering the materials and evidence placed on record by either side the Enquiry Officer has found the charges stands proved. Thereafter, explanation was called for from the petitioner and considering the gravity of misconduct and misbehavior of the petitioner he was dismissed from service.

15. Thiru Santhamoorthi, co-worker of the petitioner lodged the complaint marked as Ex.P2 (Ex.R1) narrating the occurrence that the petitioner scolded him in foul language when, he refused to obey his commands. In this regard, Supervisor M. Rajendiran has sent Ex.P1 Report. Further, the petitioner along with his associates had gone to the house of co-worker Thiru Santhamoorthi on the evening 22-10-2011 and threatened him and his wife with dire consequences. If the co-worker Thiru Santhamoorthy submitted Ex.P2 complaint to the respondent for taking necessary action against the petitioner.

16. The management took serious note of the misconduct of the petitioner and called for explanation under Ex.P3 notice. The petitioner got extension of time and finally submitted his explanation, Ex.P4 by denying such an incident. The petitioner used to send several complaints against his co-workers such as Ex.P8 and Ex.P9 to the management. Further, he has lodged Ex.P10 and Ex.P11 Police complaint in Karikkalampakkam Police Station against some of his co-workers (Executive Member of Trade Union).

17. On 29-12-2011 during second shift when, the petitioner was directed by the Supervisor to attend some alternative work he blatantly refused and abused his Supervisor. So, Ex.P12 report was sent to the management. Further, the other co-workers who were on duty at the time jointly submitted, Ex.P13 representation to the management explaining the misbehavior of the petitioner. It appears the petitioner was fined for his misbehavior and Ex.P15 is the copy of the fined receipt. On considering serious misconduct and misbehavior, he was placed under suspension as per Ex.P16 suspension order. Ex.P21 is the charge sheet, dated 6-2-2012, wherein, seven specific charges have been framed against the petitioner. The first charges relating to misbehavior of the petitioner with his co-worker Santhamoorthi on 19-10-2011. In furtherance of the same Act, the Petitioner abused the said co-worker Santhamoorthi by using filthy language is the second charge. The third charge is that on 22-10-2011 the petitioner along with his associates had gone to Santhamoorthi's house and threatened him and his wife. The fourth charge is that on 29-12-2011, the petitioner refused to do the alternative work allotted to him by the Supervisor. The fifth charge is that the petitioner abused his Supervisor by using foul language. The sixth charge is that the petitioner refused to do the work allotted to him and remained idle and the seventh charge is that the petitioner refused to obey the order of his Supervisors.

18. Admittedly, Thiru R. Mugundhan, Advocate and Notary Public has been appointed as the Enquiry Officer. During the course of departmental enquiry proceedings, the petitioner has submitted several letters such as Ex.P26, dated 15-3-2012, Ex.P31, dated 21-4-2012, Ex.P32, dated 5-5-2012 and Ex.P48, dated 21-7-2012, Ex.P36, dated 15-5-2012 seeking adjournment without any valid reasons. Further, the petitioner has presented representations such as Ex.P35, dated 15-5-2012, Ex.P37, dated 21-5-2012, Ex.P39, dated 23-5-2012, Ex.P33, dated 7-5-2012 stating that the Enquiry Officer was not properly conducting the enquiry and alleging that he was biased in favour of the management. The petitioner sought for cross-examination of Thiru G. Suresh, Representative of the management as per Ex.P39. The said G. Suresh is not a witness of

management side and he was presenting the case, on behalf of the management. So, the Enquiry Officer turned down the request of the petitioner to cross-examine Thiru G. Suresh, representative of the management.

19. The petitioner sought for copy of the certified standing order by presenting Ex.P39, dated 23-5-2012 to the Enquiry Officer. Initially, the copy of the certified standing order in English was furnished to the petitioner. The petitioner by submitting Ex.P39 representation sought for copy of the certified standing order and accordingly it was furnished. As the certified standing order was in English again the petitioner submitted Ex.P40, dated 30-5-2012 and sought for Tamil version of certified standing order. Accordingly, the copy of the certified standing order translated into Tamil was given to the petitioner. The petitioner has sent Ex.P43, dated 11-6-2012 to the General Manager of the respondent alleging that the Enquiry Officer was not conducting enquiry properly, and his request to examine the representative of the management was refused without any reason, and as the Enquiry Officer was biased in favour of the management, he should be changed and some other Enquiry Officer to be appointed. Further, the petitioner has sent Ex.P44, dated 19-6-2012, Ex.P45, dated 30-6-2012, Ex.P46, dated 7-7-2012 representations to the Enquiry Officer levelling some allegations against the Enquiry Officer. But, the Enquiry Officer has recorded his explanations in the enquiry proceedings as seen from Ex.P51.

20. The petitioner represented that his co-workers afraid of the management initiating proceedings against them if they depose in favour of the petitioner before the Enquiry Officer so they did not come forward to depose on his behalf. Further, the petitioner sought for management's assurance that no action will be taken against the workers who come forward to testify by petitioner's side. But, the petitioner has not given list of witnesses to be examined on his side. As the petitioner prolonged the matter without examining his side witnesses recording evidence of petitioner side was closed.

21. The Enquiry Officer on carefully perusing the records and materials placed during the course of enquiry and submitted his report, dated 11-9-2012 marked as Ex.P52 (Ex.R15) wherein, he has given finding that all the charges framed against the petitioner stands proved. In pursuance of the enquiry report, the management issued Ex.P53 (Ex.R16) explanation notice, dated 22-9-2012 from the petitioner again the petitioner sought for time to submit his explanation by sending Ex.P54 letter, dated 1-10-2012. Thereafter, the petitioner submitted Ex.P56 (Ex.R17) explanation, dated 12-10-2012

stating that the enquiry was not conducted in fair and transparent manner, and the principles of natural justice have been violated, and the enquiry report has been prepared in biased manner and he did not commit any misconduct. Not satisfying with the explanation offered by the petitioner, he was dismissed from service by order, dated 22-10-2012 marked as Ex.P57 (Ex.R18). Thereafter, the petitioner has raised industrial dispute before the Conciliation Officer by filing Ex.P59 representation, dated 28-1-2013 and the reply submitted by the management is marked as Ex.P60, dated 25-2-2013. As the conciliation ended in failure, Ex.P61 report, dated 3-2-2014 on failure of conciliation has been submitted and consequently the reference has been sent to this court for adjudication.

22. The learned Counsel for the petitioner submitted the ruling reported in the case of Avinash Chandra Sanjar Vs. Divisional Superintendent reported in (1962) ILJ 7 Allahabad, "In support of his contention that if the enquiry is not conducted in a fair manner by observing the principles of natural justice the enquiry report cannot be accepted".

But, the facts and circumstances discussed in the above referred authority is not applicable to the case in hand.

23. *Per Contra*, the learned Counsel for the respondent management invited attention of this Court that the petitioner's misbehavior with his co-worker and his disobedience of superior's orders amounts to cross misconduct and it is proved by the enquiry report, so, he has been terminated from service. In support of his contention he invited attention of this Court to the following authorities:-

(1) 2015 LLR 464 Sh. Mohd. Azim Vs. Sarv UP Gramin Bank:

"Refusal to obey the lawful instructions of superior(s) is a serious and grave misconduct justifying punishment of removal or dismissal from service".

(2) 2016 LLR 72 Mani Lal Vs. Matchless Industries of India:

Meaning of the word "misconduct on the basis of dictionary meaning is 'improper behaviour' i.e., intentional wrong doing or deliberate violation of a rule of standard behavior".....

"Any conduct by an employee, inconsistent with the faithful discharge of his duties towards his employer, would be a misconduct".....

"When the evidence on record reveals, that domestic enquiry, by an Enquiry Officer, appointed by the Disciplinary Authority of the employer, has been conducted by adhering to the principles of natural justice, interference by the Court, in the enquiry finding, is not called for to substitute the finding already concluded".....

(3) 2007 LLR 166 High Polymer Laboratories Vs. Jagdish Chand and Anr.:

"Discipline at a work place in an organisation is a *sine quo non* for the efficient working of the organisation".....

"When an employee willfully disobeys the orders of the supervisor and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charges proved".

24. The petitioner used to quarrel with his co-workers and intentionally disobeyed orders of his superiors and without stopping that the petitioner had gone to his co-workers to Thiru Santhamoorthi house and threatened him and his wife with dire consequences. The learned Counsel for the petitioner pointed out that Thiru Santhamoorthi has not lodged any police complaint in respect of that incident that allegedly occurred on 19-10-2011 and in fact he presented Ex.P2 complaint before the management only on 24-10-2011. So, the belated complaint of Thiru Santhamoorthi i.e., Ex.P2 has been created and it cannot be taken into account. In fact Thiru Santhamoorthi has been examined as a witness (MW.1) during the departmental enquiry and he has deposed about the occurrence and the misbehavior of the petitioner in detail. Further, when the petitioner disobeyed the order of his Supervisor and abused him in the presence of some of the workers they signed as witness in Ex.P13 report submitted by the concerned superior, namely, S. Ramesh Kumar. Already the petitioner was fined for his disobedience of his superior's orders as seen from Ex.P15 fine receipt. Further, the petitioner has sent several complaints against his co-workers to the management and also lodged a police complaint. As the petitioner's attitude behavior and temperament was resulted in spoiling the industrial harmony and peace and as his explanations were not satisfactory, the management decided to conduct departmental enquiry by appointing Thiru G. Mugundhan, Advocate as the Enquiry Officer.

25. During the course of enquiry, the petitioner sought several adjournments and insisted for cross examination of the representative of the management Thiru G. Suresh who was not at all examined as a

witness. Further, the petitioner sought for copy of certified standing order translated into Tamil and it was also furnished. The management examined five witnesses and produced seven documents. The petitioner though participated in the proceedings, did not choose to cross-examine the witnesses, and the petitioner failed to produce his side witnesses for many hearings. The petitioner has levelled some allegations against the Enquiry Officer as if he did not conduct enquiry proceedings in a fair manner by observing the principles of natural justice. A perusal of Ex.P51 enquiry proceedings would clearly demonstrate that the Enquiry Officer has given reasonable chance and opportunity to the petitioner to participate in the enquiry and to cross-examine the witnesses examined by the management and also to adduce his side evidence. But, the petitioner by adopting delay tactics prolonged the enquiry and intentionally failed to cross-examine the witnesses of the management side and also not let in his side witnesses. The Enquiry Officer has no other option except to conclude the enquiry with available material placed on record and carefully perusing them and submitted Ex.P52 enquiry report, dated 11-9-2012 by holding that all the charges formulated against the petitioner stands proved. The respondent management taking into account the gross misbehavior and gravity of the misconduct committed by the petitioner and on the basis of enquiry report decided to dismiss and accordingly Ex.P57 dismissal order, dated 22-10-2012 was issued. The contention of the petitioner counsel that the enquiry was not conducted in a fair manner and the Enquiry Officer was biased in favour of the management cannot be accepted. The petitioner has levelled unreasonable and unbelievable allegations against the Enquiry Officer but the Enquiry Officer has submitted his explanations for such allegations in enquiry proceedings (Ex.P51).

26. As the misbehavior and misconduct of the petitioner spoiled the industrial harmony and resulted in unrest among the workers, the management framed charges against him, and conducted the enquiry. Accordingly the enquiry has been conducted by the Enquiry Officer in fair and proper manner and he has submitted his report, (Ex.P52) by concluding that all the charges against the petitioner stands proved. So, I hold that the enquiry has been conducted in a fair manner and the petitioner who participated throughout the enquiry has deliberately failed to cross examine the management side witnesses and also to examine his side witnesses. Under such circumstances, I conclude that the Enquiry Officer has conducted the enquiry in a fair and proper manner by giving adequate opportunity to the petitioner to participate in the enquiry proceedings

and also to record his side evidence. Hence, I answer that the enquiry has been conducted in a fair and proper manner by strictly observing the principles of natural justice and nothing on record to hold that the enquiry report is vitiated.

27. The learned Counsel for the petitioner argued that the punishment of dismissal of service is shockingly, disproportionate to the charges levelled against the petitioner so, the punishment of dismissal may be modified, to a lesser punishment. Strongly objecting to interfere with the punishment imposed on the petitioner by the management the learned counsel for the respondent management argued that when, the enquiry was conducted in a proper and fair manner this Labour Court need not interfere with the punishment imposed on the delinquent worker. In this regard the Counsel for the respondent invited attention of this Court to ruling reported in 2016 LLR 72 the case of *Mani Lal Vs. Matchless Industries of India* that "This Court's power to interfere with the punishment imposed on the delinquent employee has become subject-matter of scrutiny in large number of cases. The terms and phrases like arbitrary, unreasonable, unconscionable and shockingly disproportionate are often used by the Advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the Courts have to constantly remain guard against adopting a populist approach in such matters and refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be exercised with a great care and circumspection. Only in exceptional cases, the Court may interfere with the punishment, if it is shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to him, sensitive nature of his posting and job requirement, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee and the punishment, if any, imposed earlier. The Court has also to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest.".....

"The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards".....

"It is also trite law that where a departmental enquiry is held to be fair and proper and the findings of the Enquiry Officer are also held to be legal, proper and not perverse, the Management is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of misconduct.".....

"The Court/Tribunal in its power of Judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence".....

"It is well-settled proposition of law that a Court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute."

28. In the instant case, there is proved misconduct and an act of insubordination disobedience by the petitioner workman. When the employee willfully disobeys the order of the Supervisor the employer terminated his services. It is not open to the Labour Court to consider the punishment awarded is shockingly disproportionate to the charges. Under such circumstances, I hold that the punishment of dismissal from service inflicted on the petitioner/workman cannot be termed as shockingly disproportionate wants interference by this Court. Accordingly, I hold that the petitioner is not entitled to claim any relief, in this industrial dispute and it is liable to be dismissed. Accordingly, this industrial dispute is dismissed.

29. In the result, this industrial dispute is dismissed. No costs.

Dictated to the Stenographer transcribed by her, corrected and pronounced by me in open Court on this the 31st day of March, 2016.

N. SIVAKUMAR,
Presiding Officer,
Labour Court, Pondicherry.

List of petitioner's witness:

PW.1— 12-2-2015 — E. Arun

List of respondent's witness:

RW.1— 26-11-2015 — O.P. Sanjay Madan

List of petitioner's exhibits:

Ex.P1 — Copy of the complaint letter issued by M. Rajendiran (Supervisor) to the respondent management, dated 19-10-2011. (Photocopy)

Ex.P2 — Copy of the complaint letter issued by V. Santhamoorthi (Co-worker) to the respondent management, dated 24-10-2011. (Photocopy)

Ex.P3 — Copy of the show cause notice issued by the respondent management to the petitioner, dated 29-10-2011. (Photocopy)

Ex.P4 — Copy of the letter for extension of time issued by the petitioner to the respondent management, dated 31-11-2011. (Photocopy)

Ex.P5 — Copy of the memo. issued by the respondent management to the petitioner, dated 11-11-2011. (Photocopy)

Ex.P6 — Copy of the complaint letter issued by the petitioner to the respondent management, dated 7-11-2011. (Photocopy)

Ex.P7 — Copy of the memo. issued by the respondent management to the petitioner, dated 15-11-2011. (Photocopy)

Ex.P8 — Copy of the complaint letter issued by the petitioner to the respondent management, dated 19-12-2011. (Photocopy)

Ex.P9 — Copy of the complaint petitions and postal receipt issued by the petitioner to the Sub-Inspector, Karikkalampakkam Police Station, Karikkalampakkam, Puducherry, dated 21-12-2011. (Photocopy)

Ex.P10 — Copy of the letter issued by the petitioner to the respondent management, dated 21-12-2011. (Photocopy)

Ex.P11 — Copy of the memo. raising industrial dispute before the Labour Officer (Conciliation), Labour Department, Puducherry, dated 21-12-2011. (Photocopy)

Ex.P12 — Copy of the complaint letter issued by S. Ramesh Kumar (Supervisor) to the respondent management, dated 29-12-2011. (Photocopy)

Ex.P13 — Copy of the letter issued by S. Ramesh Kumar (Supervisor) to the respondent management with signed by his co-workers, dated 29-12-2011. (Photocopy)

Ex.P14 — Copy of the complaint letter issued by the petitioner to the respondent management, dated 29-12-2011. (Photocopy)

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| <p>Ex.P15 — Copy of the Register of Fines (Form No.1). (Photocopy)</p> <p>Ex.P16 — Copy of the show cause notice/ Suspension Order issued by the respondent management to the petitioner, dated 18-1-2012. (Photocopy)</p> <p>Ex.P17 — Copy of the letter for extension of time issued by the petitioner to the respondent management, dated 21-1-2012. (Photocopy)</p> <p>Ex.P18 — Copy of the letter for extension of time issued by the petitioner to the respondent management and postal receipt, dated 25-1-2012. (Photocopy)</p> <p>Ex.P19 — Copy of the memo. issued by the respondent management to the petitioner, dated 27-1-2012. (Photocopy)</p> <p>Ex.P20 — Copy of the explanation letter issued by the petitioner to the respondent management, dated 30-1-2012. (Photocopy)</p> <p>Ex.P21 — Copy of the charge-sheet issued by the respondent management to the petitioner, dated 6-2-2012. (Photocopy)</p> <p>Ex.P22 — Copy of the complaint letter issued by petitioner to the respondent management, dated 9-2-2012 (Photocopy)</p> <p>Ex.P23 — Copy of the memo issued by the respondent management to the petitioner, dated 10-2-2012 (Photocopy)</p> <p>Ex.P24 — Copy of the enquiry report issued by R. Mugundhan, Advocate and Notary Public to the petitioner, dated 8-3-2012 (Photocopy)</p> <p>Ex.P25 — Copy of the objection letter issued by the petitioner to the respondent management, dated 9-3-2012. (Photocopy)</p> <p>Ex.P26 — Copy of the letter and postal receipt issued by the petitioner to R. Mugundhan, Advocate and Notary Public, dated 15-3-2012. (Photocopy)</p> <p>Ex.P27 — Copy of the Funeral Ceremony issued by Villianur Commune Panchayat, Villianur, dated 17-3-2012. (Photocopy)</p> <p>Ex.P28 — Copy of the memo. issued by the respondent management to the petitioner, dated 20-3-2012. (Photocopy)</p> | <p>Ex.P29 — Copy of the letter for Subsistence Allowance issued by the petitioner to the respondent management, dated 24-3-2012. (Photocopy)</p> <p>Ex.P30 — Copy of the letter issued by G. Suresh (representative of the respondent) to the petitioner, dated 14-4-2012. (Photocopy)</p> <p>Ex.P31 — Copy of the enquiry report issued by the petitioner to R. Mugundhan, Advocate and Enquiry Officer, dated 21-4-2012. (Photocopy)</p> <p>Ex.P32 — Copy of the enquiry report issued by the petitioner to R. Mugundhan, Advocate and Enquiry Officer, dated 5-5-2012. (Photocopy)</p> <p>Ex.P33 — Copy of the letter issued by the petitioner to the Disciplinary Authority, dated 7-5-2012. (Photocopy)</p> <p>Ex.P34 — Copy of the memo. issued by the respondent management to the petitioner, dated 11-5-2012. (Photocopy)</p> <p>Ex.P35 — Copy of the letter issued by the petitioner to the disciplinary authority with postal receipt, dated 15-5-2012. (Photocopy)</p> <p>Ex.P36 — Copy of the letter issued by the petitioner to R. Mugundhan, Advocate and Domestic Enquiry Officer with postal receipt, dated 15-5-2012. (Photocopy)</p> <p>Ex.P37 — Copy of the letter issued by the petitioner to the Disciplinary Authority with postal receipt, dated 21-5-2012. (Photocopy)</p> <p>Ex.P38 — Copy of the letter issued by the management of Human Rights Commission S. Sakthipriya to R. Mugundhan, Domestic Enquiry Officer, dated 23-5-2012. (Photocopy)</p> <p>Ex.P39 — Copy of the explanation letter issued by the petitioner to the Domestic Enquiry Officer, dated 23-5-2012. (Photocopy)</p> <p>Ex.P40 — Copy of the explanation letter issued by the petitioner to the Domestic Enquiry Officer with postal receipt, dated 30-5-2012. (Photocopy)</p> <p>Ex.P41 — Copy of the letter issued by the petitioner to the Branch Manager, Villianur Branch Post Office, Puducherry, dated 4-6-2012. (Photocopy)</p> <p>Ex.P42 — Copy of the letter issued by the petitioner to the Domestic Enquiry Officer, dated 9-6-2012. (Photocopy)</p> |
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- Ex.P43 — Copy of the letter issued by the petitioner to the General Manager with postal receipt, dated 11-6-2012 (Photocopy)
- Ex.P44 — Copy of the letter issued by the petitioner to the Domestic Enquiry Officer with postal receipt, dated 19-6-2012. (Photocopy)
- Ex.P45 — Copy of the letter issued by the petitioner to the Domestic Enquiry Officer with postal receipt, dated 30-6-2012. (Photocopy)
- Ex.P46 — Copy of the letter issued by the Petitioner to the Domestic Enquiry Officer with postal receipt, dated 7-7-2012. (Photocopy)
- Ex.P47 — Copy of the letter issued by the petitioner to the Domestic Enquiry Officer with postal receipt, dated 14-7-2012. (Photocopy)
- Ex.P48 — Copy of the letter issued by the petitioner to the Domestic Enquiry Officer with postal receipt, dated 27-1-2012. (Photocopy)
- Ex.P49 — Copy of the letter issued by the petitioner to the Domestic Enquiry Officer, dated 30-12-2012. (Photocopy)
- Ex.P50 — Copy of the letter issued by the petitioner to the Disciplinary Authority with postal receipt, dated 6-8-2012. (Photocopy)
- Ex.P51 — Copy of the Domestic Enquiry Proceeding, dated From 17-3-2012 Till 21-7-2012. (Photocopy)
- Ex.P52 — Copy of the Enquiry Report of Domestic Enquiry Officer, dated 11-9-2012. (Photocopy)
- Ex.P53 — Copy of the show cause notice issued by the respondent management to the petitioner, dated 22-9-2012. (Original)
- Ex.P54 — Copy of the letter issued by the petitioner to the respondent management, dated 1-10-2012 (Photocopy)
- Ex.P55 — Copy of the memo. issued by the respondent management to the petitioner, dated 4-10-2012. (Original)

- Ex.P56 — Copy of the reply letter issued by the petitioner to the respondent management, dated 12-10-2012. (Photocopy)
- Ex.P57 — Copy of the Termination Order issued by the respondent management to the petitioner, dated 22-10-2012. (Original)
- Ex.P58 — Copy of the explanation letter issued by the petitioner to the respondent management with postal receipt, dated 30-10-2012.(Photocopy)
- Ex.P59 — Copy of the 2(A) petition filed by the petitioner against the respondent management raising industrial dispute before the Labour Officer (Conciliation), Labour Department, Puducherry, dated 28-1-2012. (Photocopy)
- Ex.P60 — Copy of the reply letter issued by the respondent management to the petitioner raising industrial dispute, dated 25-2-2012. (Photocopy)
- Ex.P61 — Copy of the failure report of Labour Officer Original (Conciliation), Labour Department, Puducherry, dated 3-2-2012. (Original)
- Ex.P62 — Copy of the Notification under G.O. Rt. No. 33/AIL/Lab./J/2014, in Labour Department, Puducherry, dated 5-3-2014. (Original)

List of respondent's exhibits:

- Ex.R1 — Copy of the complaint letter issued by M. Rajendiran (Supervisor) to the respondent management, dated 19-10-2011. (Photocopy)
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- Ex.R14 — Copy of the Domestic Enquiry Proceedings. From 17-3-2012 till 21-7-2012. (Photocopy)
- Ex.R15 — Copy of the enquiry report of Domestic Enquiry Officer, dated 11-9-2012. (Photocopy)
- Ex.R16 — Copy of the show cause notice issued by the respondent management to the petitioner, dated 22-9-2012. (Photocopy)
- Ex.R17 — Copy of the reply letter issued by the petitioner to the respondent management, dated 12-10-2012. (Photocopy).
- Ex.R18 — Copy of the termination order issued by the respondent management, to the petitioner, dated 22-10-2012. (Photocopy).

N. SIVAKUMAR,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 37/AIL/Lab./T/2016, dated 13th May 2016)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Hidesign India Private Limited, Puducherry and Tmt. R. Vijaya over non-employment;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;

Now, therefore, by virtue of the authority delegated *vide* G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991 of the Labour Department, Puducherry to exercise the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), it is hereby directed by Secretary to Government (Labour) that the said dispute be referred to the Labour Court, Puducherry for adjudication. The Labour Court, Puducherry shall submit the award within 3 months from the date of issue of reference as stipulated under sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 and in accordance with rule 10-B of the Industrial Disputes (Central) Rules, 1957. The party raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses to the Labour Court, Puducherry within 15 days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

ANNEXURE

(a) Whether the dispute raised by Tmt. R. Vijaya against the management of M/s. Hidesign India Private Limited, Puducherry over her non-employment is justified or not? If justified, what relief the petitioner is entitled to?

(c) To compute the relief, if any awarded in terms of money, if it can be so computed?

E. VALLAVAN,
Commissioner of Labour-cum-
Additional Secretary to Government
(Labour).